

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

AMENDMENT TO BUILDING AND SERVICES AGREEMENT  
BETWEEN  
CITY OF DURHAM AND THE CAROLINA THEATRE OF DURHAM, INC.

This Amendment is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2016, between the City of Durham, a North Carolina municipal corporation ("City"), and The Carolina Theatre of Durham, Inc. (hereinafter "CTD"), 309 West Morgan Street, Durham, NC 27701, a non-profit corporation organized and existing under the laws of the State of North Carolina. The City and CTD together are the "Parties."

This amends the Agreement entered into between the parties dated April 23, 2014, entitled, "City of Durham and The Carolina Theatre of Durham, Inc. Building and Services Agreement." The parties hereby agree to add the following terms which constitute Attachment 1:

1. CTD shall amend its by-laws to provide that the Durham City Council shall appoint up to four persons to serve on the CTD board of directors, one of whom shall be a City Councilmember who shall serve as a City Council liaison and the other three to be appointed at the Council's discretion as it sees fit.
2. Notwithstanding the language in Section 5.1 of the Agreement on the maximum payments from the City to CTD, the City hereby pledges to pay CTD a non-recurring amount of up to \$600,000.00, additional to the annual payment under the Agreement, with the following conditions:
  - a. Draw-down payments up to the total of no greater than \$600,000.00 shall be matched by private pledges on a 1:1 basis, with such pledges specifically designated as being for the "Carolina Theatre Debt Retirement", "90<sup>th</sup> Anniversary Campaign" or such other name or names agreed to by the Parties ("DR Pledges"). The Parties acknowledge that DR Pledges are separate and apart from recurring donations raised through CTD's annual fund. The Parties agree that CTD may designate 90 seats in Fletcher auditorium that, for a limited time, may be affixed with special "90<sup>th</sup> Anniversary Plaques" recognizing donors who make DR pledges of \$2500 or more, and amounts raised by these Plaque donations shall count toward the matching requirement to receive the City's \$600,000.
  - b. As of the signing of this Amendment, the City has provided \$\_\_\_\_\_ of the \$600,000.00, with \$\_\_\_\_\_ remaining eligible for matching DR Pledges.
  - c. The City is only obligated hereunder to provide so much of the \$600,000.00 of this additional payment as is necessary to stabilize CTD's operations and retire its debt, and should cash flow from other sources, (including but not limited to, the City's annual allocation under this Agreement, operating income and donations), be sufficient to provide for CTD's cash flow needs and retire its debt, the City shall not be obligated to pay CTD the full \$600,000.00, but that number shall instead operate as a maximum

extraordinary payment from the City to CTD.

- d. Pledges for contributions received in the course of the routine, usual fundraising done by CTD in the normal course of business do not qualify for matches by City funds.
  - e. All DR Pledges must be in hand, paid to CTD prior to June 31, 2017. The City reserves the right to make its matching payments after DR Pledges have actually been received and are held by CTD. Notwithstanding the above provisions, the City agrees that CTD may accept interest free loans that are eligible for matching payments when issued so long as such loans provide that they can only be repaid by funds from DR Pledges. Any such interest free loan will stipulate that if CTD is unable to collect sufficient DR Pledges to repay the loan within three years of the date of issue, any unpaid portion of such loan will automatically convert to a donation.
- 3. CTD will provide periodic reports on the on-going financial condition of the Carolina Theatre, as well as providing projected and actual financial results of all shows in a format agreed to by the Parties, as directed by the City's Finance Director.
  - 4. CTD will retain a consultant acceptable to the City to advise the President and Board as needed on the operation of the Carolina Theatre.

Except as amended herein, the terms and conditions of the Agreement are hereby reaffirmed and remain in full force and effect.

IN WITNESS WHEREOF, the City and the CTD have caused this Agreement to be executed under seal themselves or by their respective duly authorized agents or officers.

CITY OF DURHAM

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THOMAS J. BONFIELD  
CITY MANAGER

Attest:

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City Clerk

THE CAROLINA THEATRE OF DURHAM, INC.

\_\_\_\_\_  
DAN BERMAN  
PRESIDENT/CHIEF EXECUTIVE OFFICER

Attest:

\_\_\_\_\_  
Corporate Secretary  
(Affix Corporate Seal)

STATE OF NORTH CAROLINA    ACKNOWLEDGMENT BY CITY OF DURHAM  
COUNTY of DURHAM

I, a Notary Public in and for the aforesaid County and State certify that  
\_\_\_\_\_ personally appeared before me  
this day, and acknowledged that he or she is the City Clerk of the City of Durham, a municipal  
corporation, and that by authority duly given and as the act of the City, the foregoing contract  
was signed in its corporate name by its City Manager, sealed with its corporate seal, and attested  
by its said City Clerk. This the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY of DURHAM

ACKNOWLEDGMENT BY THE  
CAROLINA THEATRE OF DURHAM, INC.

I, a Notary Public in and for the aforesaid County and State, certify that  
\_\_\_\_\_ personally appeared before me this day and  
stated that he or she is Secretary of Carolina Theatre of Durham, Inc., a not-for-profit North  
Carolina corporation, and that by authority duly given and as the act of the corporation, the  
foregoing contract with the City of Durham was signed in its name by its President/Chief  
Executive Officer, whose name is \_\_\_\_\_, sealed with its  
corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the  
\_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_